

MINUTES
STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION (WVHRC) MEETING

WEDNESDAY, FEBRUARY 27, 2008

3:00 PM-4:30 PM

1321 Plaza East

Charleston, WV 25301-1400

(Conference Room)

Taken and Prepared by:

Esther M. Hupp

Assistant Administrative Secretary

Members of the Commission Present:

Ellen Allen
Dr. Helen Bond (via telephone)
Dr. Dawn Raines Burke, VC (via telephone)
Naomi Cohen
Dr. Darrell Cummings, Chair
Tim Hairston
William L. Williams
Lisa Younis (via telephone)

Members of the Commission Absent:

Dr. Judith Scully

WVHRC Staff Present:

Paul Cook, IS Coordinator
Esther Hupp, Asst. Admin. Secretary
Joyce Knotts, Legal Secretary
Brian W. Wells, General Counsel

Attorney General's (AG) Office

Civil Rights Division (CRD) Staff

Present:

Paul Sheridan, Deputy AG

Guests:

Seth DiStefano, ACLU

*Dr. Darrell Cummings as Chair Called the Meeting to Order
at 3:10PM*

The following was discussed based upon the agenda:

Preliminary Matters

The Commission had a Quorum present. This meeting was properly posted to the website of the Secretary of State's Office and approved for meeting purposes.

I Meeting Called to Order

Dr. Darrell Cummings, as Chair, called the meeting to order.

II. Old Business

Chair Dr. Darrell Cummings asked if there were any corrections to the meeting minutes from January and asked for a motion to accept the Minutes of January 10, 2008.

Motion: Commissioner Tim Hairston

Second: Commissioner William Williams

Vote: All in Favor

Whereupon, the Minutes for the January 10, 2008 Commission Meeting were accepted.

III. New Business

- A. Chair Cummings asked for the Committee's report, as indicated for discussion in the Agenda.
- B. Commissioner Naomi Cohen said that the Agenda stated that the Committee was to discuss the proposed legislation before the West Virginia Senate and the House of Delegates as well as the discussion on the Hate Crimes Task Force. She stated that the Committee was ready to present on the proposed legislation, but was not yet ready to report on the Hate Crimes Task Force.

- C. Chair Cummings said the change would be noted, and asked for the Committee's proposal regarding the proposed sexual orientation legislation.
- D. General Counsel Brian Wells asked if the Commissioners wanted to conference in Judith Scully and Commissioner Cohen stated that former Commissioner Judith Scully had resigned from the Commission.
- E. Commissioner Cohen handed out copies of the Senate and House Bills, which propose adding sexual orientation as a protected class under the West Virginia Human Rights and Fair Housing Acts. She informed the commissioners that Senate Bill 600 had passed on February 26, 2008, with an amendment, by a vote of 32 approved, 0 against and 2 absent at the time of voting. She read the amendment to the Commissioners and explained that it provides an exemption for religious and non-profit organizations.
- F. Commissioner Cohen informed the Commissioners that the bill would now move to the House of Delegates, where she believes that it will pass with the same amendment added in the Senate bill.
- G. Commissioner Cohen stated that it was her proposal that the Commissioners vote to send a recommendation to the House of Delegates recommending the adoption of this legislation. She stated that Commissioners had the power to recommend legislation as cited in WV Code §5-1 1-8(e).
- H. Chair Cummings asked for open discussion on the matter.
- I. Commissioner Lisa Younis stated that she was uncomfortable with the Commissioners taking the action to recommend this legislation, as she believed it was a political, partisan issue. She encouraged the Commissioners to think objectively.
- J. Vice Chair Dawn Raines Burke stated that the question before the Commission was whether this was a human rights issue. She stated that she did not see how the Human Rights Commission, if they believed this to be an issue affecting human beings, could step away from the issue. She further proposed discussion on the issue by all Commissioners.
- K. Commissioner Cohen asked if the Commissioners should try to reach Commissioner Helen Bond again so that she might be included in the discussion.
- L. Vice Chair Burke stated that she believed it imperative to have Commissioner Bond available for this discussion, as she believed Commissioner Bond had worked hard on the first proposal of sexual orientation legislation under the first Bush administration,
- M. The Commission remained unsuccessful in reaching Commissioner Bond at this point.

- N. Commissioner Ellen Allen stated that she has homosexual friends that have been denied a safe work environment because of their orientation. She stated that she believes the Commissioners should take a stand on the issue.
- O. Commissioner Younis stated that she still had questions. She asked why the Commissioners were not discussing the other side of the issue. She also stated that she believed this to be a political tool, in which the Commissioners should have no place.
- P. Chair Cummings stated that he believed there were other questions to be asked. He asked if the other Commissioners believed that the House of Delegates was waiting on the Commissioners' recommendation before proceeding to pass the legislation. He asked if the Commissioners had been asked to comment on the issue. He stated that he believed a recommendation to be an aggressive move where it was not needed. Chair Cummings stated that he believed the House did not need the Commissioners' help in this matter.
- Q. Chair Cummings reminded the Commissioners that they still had not completed their training. He said that although the text read by Commissioner Cohen giving them the authority to make recommendations might be valid, he believed they needed to wait for further interpretation. He stated that these questions might be answered at the March 13, 2008, meeting which would include ethics training from the Ethics Commission.
- R. Commissioner Timothy Hairston stated that he believed what the Committee was recommending was a way to "strike while the iron is hot." He stated that he had already had experience working on this legislation, separate from his role with the Commission, for quite some time and admitted that it was personal for him. He said that since the bill was already moving he thought it was imperative that the Commissioners make a recommendation. Commissioner Hairston warned that if the Commissioners waited, the bill could be looking at several more years in the process.
- S. Vice Chair Burke asked Commissioner Hairston to elaborate on his experiences working on the legislation and asked for any problems he had encountered in the process.
- T. Commissioner Hairston stated that while he had not experienced this harassment in his workplace, he had heard rumors of things going on around him.
- U. Chair Cummings excused himself and asked Commissioner William Williams to take control of the meeting while he was gone.
- V. Commissioner Allen stated that this discrimination does exist and said it happens quite often and the companies get away from it.
- W. Commissioner Cohen read a quote from Senator McCabe, a sponsor of the bill, as published in an article on the topic. She read, "He said, 'Passage

of this Bill would put West Virginia in line with other states and with the private sector in regards to anti-discrimination policies.”

- X. Commissioner Younis asked for clarification that only 20 states had passed this legislation into law.
- Y. Commissioner Cohen quoted Brooks McCabe again from the article. She stated that West Virginia needed to attract young people to the state and she believed this legislation would do that. She also stated that this issue was a concern for a Commission that cared about the human rights of all people to take a step forward to extend the protection of the Human Rights Act.
- Z. Commissioner Younis stated that she did not believe this legislation would be a significant way to attract or keep young people in the state, even though it may help. She also wanted to confirm that she is someone who cared about human beings, even if she did not agree with them on the issue.
- AA. Commissioner Cohen asked for the discussion to be suspended in order to wait for Commissioner Bond to be reachable by telephone. She asked that the Commission move on to the next order of business, discussion regarding the previous meeting and public forum held in Logan, WV.

IV. Other Business

- A. Commissioner Cohen and Commissioner Hairston handed out copies of the pro/con lists they had prepared in regards to the Logan Public Forum. [Exhibits A and B]
- B. Commissioner Burke stated that following the Logan Public Forum she thought it might be beneficial to discuss the pros and cons of the event. She stated that topics of discussion might include how it was viewed and whether they believed it was helpful to the community. She volunteered to collect all the information discussed and present it to the full Commission at the next meeting.
- C. Commissioner Cohen stated that she believed there was a good turnout. She thought it was a positive thing that the sheriff was there to speak to the public and inform them that the police department may need bias training. She discussed several of the issues brought forth by the public at the forum. Commissioner Cohen believed that it provided visibility for the Commission and "put human faces" on the Commissioners and the Human Rights Commission staff. She thought it was a great way to educate the public. She

also stated that she believed Executive Director Ivin B. Lee was especially effective in voicing the role of the Commission and the purpose of the forum.

- D. Commissioner Burke agreed that Executive Director Lee was "phenomenal."
- E. Commissioner Bond was finally reached and the rest of the Commissioners informed her of the previous discussion.
- F. Commissioner Cohen stated that her cons in regards to organizing more public forums throughout the state included increased travel for Commissioners and Human Rights Commission staff and more work for the staff.
- G. Commissioner Hairston listed his pros and cons as stated on his handout. He said that he really liked that members of senior staff were available at the meeting so that the public could see the structured body of the Human Rights Commission. He stated that his cons included the time it took to have such a forum for the public in that area and the incident itself that focused the Commissioners' attention on the area. He stated that he would have preferred more publicity on the event, a better location, and a longer forum that would provide ample time for more members of the community. Commissioner Hairston stated that he would like to "make this a road show...from time to time."
- H. Commissioner Alien stated that what was most impressive to her was the amount of discrimination at state agencies. She stated that she believed the Human Rights Commission should work on addressing this issue. She stated that the only negative aspect of the event was simple logistics.
- I. Commissioner Williams stated that there were the same problems in Logan as there were all over the state. He said that he had been fighting for 20 years and stated that he believed it would be beneficial to go other places throughout the state as well. He said that in his 20 years of service he had traveled all over the state and he definitely believes the Commissioners "should take this show on the road." Commissioner Williams reminded the Commissioners, however, that it was important to check with Executive Director Lee to determine the budget and what allowances might need to be made for travel expenses. He stated that the Commissioners did not need to hold public meetings, but instead could have their regular scheduled meetings in separate parts of the state and come the night before to determine the situation in the area before the meeting.

- J. Commissioner Cummings stated that he believed the event was informative and he was interested in doing it again wherever else it might be helpful.
- K. Commissioner Bond stated that she agreed with most of the Commissioners that it was a positive experience. She said that she believed they were doing "the people's work" She said that the forum made the Commissioners accessible to the people and educated the public on the process. She said that she knew that logistically speaking it took a great deal of coordination, but she believed the Commission should develop their "outreach" program further. She stated that she would have liked to hear more about the issues in order to develop that outreach.
- L. Commissioner Younis agreed with the rest of the Commissioners.
- M. Vice Chair Burke said that from what she was hearing, the event was positive. She stated that she believed that they should "take the Human Rights Act to the people of the state." She stated that she had never been more proud of Executive Director Lee for her ability to "put people at ease" and explain the process to the public. Vice Chair Burke said that she agreed that they should "take this show on the road" and should incorporate regular events like these into the Commissioners' future plans.
- N. Commissioner Younis proposed a possible forum in the Eastern Panhandle and stated that Commissioners Bond and Vice Chair Burke would work together with her to develop more plans for a possible trip to that area in July of 2008. She stated that a theatre festival in the area during that time would present issues through plays that deal with race relations that would provide some perspective and information to the Commissioners themselves that might be beneficial to their mission. She proposed that they hold another public forum at Shepherd University the following day.
- O. Chair Cummings asked if there were any specific problems that needed to be addressed in that area. Commissioner Younis stated that although a common misconception was that those issues did not exist in the area that was so close to the area of Washington D.C., the same issues existed in the area as the rest of the state and she believed the people of the area would find it beneficial to see the Human Rights Commission come and take an interest in the issues facing them.

- P. Commissioner Bond stated that there were many important issues facing that region of the state, though they may be different than those facing the people of Logan, WV.
- Q. Chair Cummings asked if the event was supposed to be simply informative. He stated that the reason the Commissioners had traveled to Logan was because there was a serious issue that called attention to the area, even though the issue was not mentioned directly because of the legal issues attached to it.
- R. Commissioner Younis stated that the reason they had proposed travel to that area was because three of the Commissioners were from the area and could coordinate the event.
- S. Vice Chair Burke stated that she had been upset by a comment made by a representative of the Governor who stated at the forum in Logan "you people don't have the same concerns as we do." She stated that she felt that it was an "us vs. them mentality."
- T. Chair Cummings stated that he had no problem with traveling to that or any area but he reminded the Commissioners that the issue of the budget would need to be addressed by Executive Director Lee before any plans could be formalized on the issue.
- U. Chair Cummings asked for a motion that Executive Director Lee provide the Commissioners with an outline of the available budget for outreach and that Commissioners Younis, Bond, and Vice Chair Burke provide the Commission with a more detailed outline of the possible event in Shepherdstown.

Motion: Commissioner Naomi Cohen
Second: Commissioner William Williams
Vote: All in Favor

Whereupon, the Executive Director, Ivin B. Lee, is asked to submit a budgetary report to the Commission regarding the available funds for the Commissioners' outreach interests and Commissioners Younis, Bond, and Vice Chair Burke are directed to provide the Commission with a detailed outline of the possible July 2008 event in the Eastern Panhandle at the March 13, 2008 meeting of the Commission.

V. Chair Cummings asked to return to the discussion on proposed legislation in new business.

V. **Return to New Business**

A. Commissioner Cohen asked Commissioner Bond if she was aware of the passing of Senate Bill 600. Commissioner Bond confirmed that she was aware.

B. Commissioner Cohen proposed that the Commissioners recommend to the House of Delegates that it adopt the Senate version of the bill.

Chair Cummings again stated his concern that the Commissioners had not finished their mandatory training. He stated that he was not directly opposed to the legislation, but to the recommendation from the Commissioners. He stated that when or if the Governor asked them for an opinion on the issue, he would be happy to provide it.

D. Commissioner Cohen made a motion that "The West Virginia Human Rights Commission pursuant to its authority and powers under Section 5-11-8 (e) of the West Virginia Human Rights Act recommends that the West Virginia House of Delegates adopt the language of Senate Bill 600 to amend the West Virginia Human Rights Act."

Motion: Commissioner Naomi Cohen

Second: Commissioner Ellen Allen

Vote: 6 in Favor, 0 Opposed, 2 Abstentions

Chair Darrell Cummings and Commissioner Lisa Younis abstained.

Whereupon, the Commissioners of the West Virginia Human Rights Commission recommend to the West Virginia House of Delegates that it adopt the language of Senate Bill 600 to amend the West Virginia Human Rights Act.

E. Deputy Attorney General Paul Sheridan asked Commissioner Cohen how she proposed to draw up such a recommendation.

- F. Commissioner Cohen asked if General Counsel Brian Wells could simply draw up the recommendation from the motion. She stated that she would write down the motion so that Mr. Wells could draft the recommendation.
- G. Mr. Sheridan came forth to give a report for the Civil Rights Division of the West Virginia Attorney General's Office. [Exhibit C]
- H. Mr. Sheridan stated that it was a busy time for the Civil Rights Division. He provided handouts of his report to the Commissioners and pointed out certain developments he wanted them to be aware of
- I. Mr. Sheridan stated that the most significant development was the case of West Virginia Human Rights Commission/Summers v. Gary Walden, Civil Action No. 06-C-230. He stated that the case had been moved to circuit court in order to seek punitive damages. He said they had some problems finding others who had been harassed by Mr. Walden but it seemed there were a lot of cases of the system not following through on complaints. Mr. Sheridan stated that they had received a consent decree in the case admitting to a pattern of practice violation of the Fair Housing Act and agrees to a civil penalty of \$50,000, the maximum penalty under the statute. Mr. Sheridan stated that he also agreed to pay \$175,000 in compensatory damage, which will be distributed among the victims that can be identified. Mr. Sheridan informed the Commission that the respondent was placed under injunctive relief, which orders him to have no personal contact with any of his tenants for the next eight years. Mr. Sheridan stated that it was one of the largest awards of damages in a housing case and that the guilty plea of the respondent would make it very difficult for appeal. He stated that the consent decree also develops a policy that limits discrimination and enforces that the respondent must give notice to all tenants of their right to file with the Human Rights Commission. If the respondent violates this agreement, the civil penalty could reach \$100,000.

Mr. Sheridan discussed the case of Davis & Burton Contractors v Virginia Human Rights Commission and Clarence Scott, Civil Action No. 04-C-771. The case was appealed in Huntington, which the Attorney General's office contested because they believed appeals should go through Kanawha County. The motion to hear the case in Kanawha County was denied and the case sat for three years. When the case was finally heard the judge upheld the Commission's decision.

- K. Mr. Sheridan informed the Commission that the Commissioners recent decision in the case of Go-Mart v. West Virginia Human Rights Commission and Elmer Graham Hardway, Civil Action No. 06-AA-111 was heard on appeal and was upheld. He stated that though the question of timing in filing the case was decided upon, the question of discrimination was still being discussed. He stated that a case in the United States Supreme Court seems to be similar and the Equal Employment Opportunity Commission seems to be standing with the Commission.
- L. Mr. Sheridan reported that a default judgment had been granted in the case of West Virginia Human Rights Commission/Angela Frye v. Future Inns of America-Huntington and Richard A, Huff, Civil Action No. 07-Misc-66. The amount of damages originally awarded (\$7,000) in the case grew because of accrued damage because they had been chasing the respondent in order to enforce payment of damages. Mr. Sheridan stated that they had finally received a default judgment in the case and the case had been turned over the complainant.
- M. Mr. Sheridan stated that in the case of West Virginia Human Rights Commission/Sheila Hall v. Wal-Mart Stores, Civil Action No. 07, the respondent had finally paid the full-awarded judgment. He stated that an additional lawsuit had to be filed against them in Circuit Court in order to enforce payment.
- N. Commissioner Williams asked about a case he had heard won against the Chairman of the Finance Committee in the Senate. He stated that the gentleman refused any attempts for increases in budget for the Human Rights Commission because he had several cases brought against him before the Commission.
- O. Mr. Sheridan stated that this was the major challenge of the Commission. He stated that the gentleman in question was not the only legislator who had complaints filed against them at the Human Rights Commission.
- P. Mr. Sheridan informed the Commissioners that the Civil Rights Division had begun conducting training sessions with investigators of the Human Rights Commission. One session involved Prima Facie cases and another was on complainant interviewing, Mr. Sheridan informed the Commissioners that it had been five years or more since training had been offered and given to the investigators and said that more training was planned.

VI. Adjournment

Chair Cummings asked if there was anything else that needed to be brought to their attention and asked for a motion to adjourn.

Motion: Commissioner William Williams

Second: Commissioner Naomi Cohen

Vote: All in Favor

Whereupon, the current meeting is adjourned and the next Commission Meeting will take place at the office of the Commission on March 13, 2008, at 10:00 AM in the Conference Room, 1321 Plaza East, Charleston, West Virginia 25301-1400. The meeting will include mandatory Ethics Training conducted by the Ethics Commission.

Entered this 7th day of March 2008.

Respectfully submitted,

**Ivin B. Lee
Executive Director**